

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**

7 **WESTERN DISTRICT OF WASHINGTON, AT SEATTLE**

8 \* \* \* \* \*

9 BOARD OF TRUSTEES OF THE  
10 EMPLOYEE PAINTERS' TRUST; BOARD  
11 OF TRUSTEES OF THE WESTERN  
12 GLAZIERS RETIREMENT TRUST FUND;  
13 BOARD OF TRUSTEES OF THE DISTRICT  
14 COUNCIL NO. 5 APPRENTICESHIP AND  
15 TRAINING TRUST FUND; TRUSTEES OF  
16 THE WASHINGTON CONSTRUCTION  
17 INDUSTRY SUBSTANCE ABUSE  
18 PROGRAM; TRUSTEES OF THE  
19 INTERNATIONAL PAINTERS AND ALLIED  
20 TRADES- LABOR MANAGEMENT  
21 COOPERATION INITIATIVE;  
22 INTERNATIONAL UNION OF PAINTERS  
23 AND ALLIED TRADES DISTRICT  
24 COUNCIL NO. 5,  
25

Plaintiffs,  
vs.

19 ALASKA GLAZING, INC., an Alaska  
20 corporation, d/b/a FAÇADE TECH; MICHAEL  
21 E. MERRILL, an individual; HARTFORD FIRE  
22 INSURANCE COMPANY, a Connecticut  
23 corporation; DOES & ROES I-X,

24 Defendants.

CASE NO.: 2:19-cv-1924

**COMPLAINT**

23 The Plaintiffs, BOARD OF TRUSTEES OF THE EMPLOYEE PAINTERS' TRUST;  
24 BOARD OF TRUSTEES OF THE WESTERN GLAZIERS RETIREMENT TRUST FUND;  
25

COMPLAINT

Case No.

Page 1

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1 BOARD OF TRUSTEES OF THE DISTRICT COUNCIL NO. 5 APPRENTICESHIP AND  
2 TRAINING TRUST FUND; TRUSTEES OF THE WASHINGTON CONSTRUCTION  
3 INDUSTRY SUBSTANCE ABUSE PROGRAM; TRUSTEES OF THE INTERNATIONAL  
4 PAINTERS AND ALLIED TRADES-LABOR MANAGEMENT COOPERATION  
5 INITIATIVE; INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES  
6 DISTRICT COUNCIL NO. 5 (collectively “Plaintiffs”), by and through their counsel,  
7 Christensen James & Martin and The Urban Law Firm, complain and allege as follows:

8 **JURISDICTION AND VENUE**

9 1. This Court has jurisdiction of this case pursuant to Section 502(e)(1) of the  
10 Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §  
11 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil actions  
12 brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress  
13 violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such  
14 jurisdiction exists without respect to the amount in controversy or the citizenship of the parties,  
15 as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

16 2. This court has jurisdiction of this case pursuant to Section 301(a) of the Labor  
17 Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a), which grants  
18 the United States District Courts original jurisdiction over suits for violation of contracts between  
19 an employer and labor organization in an industry affecting commerce, without respect to the  
20 amount in controversy or the citizenship of the parties.

21 3. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C.  
22 § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is the Judicial  
23 District in which the Trusts are administered, the signatory labor organization maintains its office,  
24 where the relevant acts took place, and where the contractual obligation is to be paid.

25

COMPLAINT

Case No.

Page 2

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1           4. To the extent this Complaint sets forth any state law claims, this Court has  
2 supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1337(a).

## **PARTIES AND GENERAL ALLEGATIONS**

4        5.        The EMPLOYEE PAINTERS' TRUST, WESTERN GLAZIERS RETIREMENT  
5        TRUST FUND; DISTRICT COUNCIL NO. 5 APPRENTICESHIP AND TRAINING TRUST  
6        FUND; WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM;  
7        INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES- LABOR  
8        MANAGEMENT COOPERATION INITIATIVE; are express trusts created pursuant to formal  
9        written declarations of trust ("Trust Agreements") between various unions, including the  
10      International Union of Painters and Allied Trades District Council No. 5 and its associated Locals  
11      ("Union"), and various multiemployer associations.

12       6.      The Trusts exist for the specific purpose of providing employee benefits to  
13 participants under a “multiemployer plan,” “employee benefit plan,” “employee benefit pension  
14 plan,” and/or “employee welfare benefit plan,” as the case may be, within the meaning of ERISA,  
15 29 U.S.C. § 1002.

16        7.        The Board of Trustees and the individual Trustees of each of the Trust Funds is a  
17        “named fiduciary,” “plan administrator” and “plan sponsor” and each is an individual “fiduciary,”  
18        within the meaning of 29 U.S.C. §§1102(a), 1002(16) and (21), with respect to collection of  
19        contributions due to the Trust Funds and related matters.

20        8.      These Trusts were created and now exist pursuant to Section 302(c) of the LMRA,  
21      29 U.S.C. § 186(c), and are administered in Seattle, Washington.

22        9.        At all times material herein, the Union has been a labor organization representing  
23 employees in the construction industry in Washington, Oregon, Alaska, Utah and Northern Idaho.  
24 The Union represents employees in an industry affecting commerce within the meaning of Section  
25 301(a) of the LMRA, 29 U.S.C. § 185(a).

1       10.    Defendant ALASKA GLAZING, INC. d/b/a Façade Tech (“Alaska Glazing”) is  
2 an Alaska corporation authorized and registered to do business in the State of Washington and  
3 identified by Washington UBI Number 603 603 419. Alaska Glazing holds a glazing/glass  
4 specialty Washington State Contractors License No. FACADT\*837MQ.

5       11.    Defendant MICHAEL E. MERRILL (“Merrill”) is an individual residing in the  
6 State of Washington.

7       12.    Defendant, HARTFORD FIRE INSURANCE COMPANY (“Hartford”), is a  
8 Connecticut corporation licensed to conduct business in Washington.

9       13.    The true names and capacities, whether partnership, individual, corporate,  
10 company, associate or otherwise of John Does I-X, inclusive, and Roe Corporations I-X,  
11 inclusive, are unknown to the Plaintiffs at this time and said Defendants are therefore sued by  
12 fictitious names. The Plaintiffs reserve the right to amend the Complaint to insert additional  
13 charging allegations, together with the true identities and capacities, when the same have been  
14 ascertained.

15       14.    At all times material herein, Alaska Glazing has been party and signatory to two  
16 collective bargaining agreements. One is known as the IUPAT DC5/Local Union 188  
17 Independent Commercial Glazing CBA and the other is known as the IUPAT DC5/Local Union  
18 188 In-Shop Production Workers CBA.

19       15.    Each of Alaska Glazing’s CBAs with the Union were signed by Merrill.

20       16.    At all times material herein, Alaska Glazing has been obligated by the terms of the  
21 CBAs to submit monthly reports to the Plaintiffs showing the hours worked by its employees  
22 performing work covered under the CBA.

23       17.    At all times material herein, Alaska Glazing has been obligated by the terms of the  
24 CBA to properly pay to the Plaintiffs fringe benefit contributions, benefits, dues and/or  
25

COMPLAINT

Case No.

Page 4

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1 withholdings, on a monthly basis and at specified rates for each hour worked by or paid to the  
2 employees for covered labor performed by the employees.

3       18. Alaska Glazing also agreed to be bound by the terms and provisions of each of the  
4 Trust Agreements that created the Trusts. The Trusts are named and intended third-party  
5 beneficiaries of the CBA.

6       19. Alaska Glazing is an “employer” as that term is understood and defined in the  
7 CBA and is an “employer” as that term is used in Section 3(5) of ERISA, 29 U.S.C. § 1002(5),  
8 and therefore, Alaska Glazing is “obligated to make contributions to a multiemployer plan” within  
9 the meaning of Section 515 of ERISA, 29 U.S.C. § 1145.

10       20. Alaska Glazing is an “employer” engaged in “commerce” in an “industry affecting  
11 commerce,” as those terms are defined and used in Sections 501(1) and 501(3) of the LMRA, 29  
12 U.S.C. § 142(1) and (3), and within the meaning and use of Section 301(a) of the LMRA, 29  
13 U.S.C. § 185(a).

14       21. By signing the CBA, Alaska Glazing agreed that the terms and conditions of the  
15 CBA would be extended to all of its glass, glazing, window installation, window repair and  
16 construction employees working in those trades. Thus, coverage of the CBA is defined by job  
17 classification and type of work performed.

18       22. All employees of Alaska Glazing are covered by the CBA if they perform glass,  
19 glazing, window installation, window repair and construction work, regardless of the employee’s  
20 personal affiliation or non-affiliation with any union.

21       23. Defendant Merrill is an owner, officer, director, and governor of Alaska Glazing.

### **FIRST CAUSE OF ACTION**

23       [Breach of Written Labor Agreement & Related Trust Agreements – Alaska Glazing]

24       24. The Plaintiffs herein restate and reallege the above allegations as if fully set forth  
25 verbatim.

COMPLAINT

Case No.

Page 5

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1       25. By the terms of the CBAs and related Trust Agreements, Alaska Glazing was  
2 required to remit reports and fringe benefit contributions, benefits, dues and/or withholdings to  
3 the Plaintiffs for each hour of covered labor performed by their employees. These reports were to  
4 be filed monthly with the Trust Funds.

5       26. Alaska Glazing is contractually delinquent because it failed to pay fringe benefit  
6 contributions for its reported covered labor.

7       27. Alaska Glazing's failure to pay fringe benefit contributions is a breach of the CBA  
8 and related Trust Agreements.

9       28. Pursuant to the CBA and related Trust Agreements, Alaska Glazing agreed that in  
10 the event of any delinquency, Alaska Glazing would pay, in addition to the delinquent fringe  
11 benefit contributions, benefits, dues and/or withholdings, i) interest thereon at the rates  
12 established under the applicable collective bargaining or trust agreement, or at the legal rate,  
13 whichever is greater; ii) liquidated damages thereon in an amount set by the applicable collective  
14 bargaining agreement, trust agreement, or as otherwise provided or by law; and iii) all legal and  
15 auditing costs in connection therewith, whether incurred before or after litigation is commenced.

16       29. Alaska Glazing submitted reports to the Trust Funds for August and September  
17 2019 work months showing hours worked by its employees but did not remit payment with those  
18 reports. Those reports remain unpaid.

19       30. Alaska Glazing also submitted and paid its July 2019 work month report late to  
20 the Trust Funds, which caused Alaska Glazing to accrue liquidated damages and interest under  
21 the CBA and Trust Agreements.

22       31. It has been necessary for the Plaintiffs to engage the law firms of Christensen  
23 James & Martin and The Urban Law Firm to enforce the contractual obligations owed to the  
24 Plaintiffs and collect any and all amounts due.

25       32. Pursuant to the CBA and Trust Agreements, Alaska Glazing owes the Plaintiffs

COMPLAINT

Case No.

Page 6

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005

THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718

wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1 fringe benefit contributions, benefits, dues and/or withholdings calculated or measured by all  
 2 hours of covered labor performed by their employees, plus interest at the contractual rate on all  
 3 unpaid contributions from the dates the sums were originally due to the Plaintiffs to the date of  
 4 judgment, liquidated damages, reasonable attorney's fees, court costs, and auditing costs incurred  
 5 by the Plaintiffs as a result of the breaches described herein.

6       33. The following amounts are owed by Alaska Glazing:

7 Contributions for August and September	\$117,111.76
8 2019 Reports	
9 Liquidated Damages and Interest for Late	\$11,219.82
10 June and July 2019 Reports	
11 <b>TOTAL:</b>	<b>\$128,881.58</b>

12       34. In addition to the amounts shown in the table above, Alaska Glazing is also liable  
 13 to the Trust Funds under the CBA, Trust Agreements, and 29 U.S.C. 1132(g)(2) for the Plaintiffs'  
 14 attorney's fees and costs incurred, liquidated damages for the unpaid August and September  
 15 reports that continue to accrue, and interest for the unpaid August and September reports that  
 16 continues to accrue.

17       35. Upon entry of judgment, the Plaintiffs are entitled to post-judgment interest at the  
 18 highest rate allowed by law. The amount of such interest will be established by proof at trial or  
 19 through dispositive motion.

20                   **SECOND CAUSE OF ACTION**

21                   [Violation of ERISA - Alaska Glazing]

22       36. The Trusts herein restate and reallege the above allegations as if fully set forth  
 23 verbatim.

24       37. By failing to report and pay contributions to the Plaintiffs in accordance with the  
 25 CBA and Trust Agreements, Defendants have violated ERISA [29 U.S.C. § 1145]. In accordance

COMPLAINT

Case No.

Page 7

CHRISTENSEN JAMES & MARTIN  
 11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
 THE URBAN LAW FIRM  
 720 N. 10th Street, A #389, Renton, WA 98057  
 P. (425) 462-4045 / (702) 255-1718  
 wes@cjmlv.com  
 nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1 with the terms of the Labor Agreement and Trust Agreements, and pursuant to Sections 502(g)(2)  
2 and 515 of ERISA [29 U.S.C. §§1132(g)(2) and 1145], the Plaintiffs are entitled to payment of  
3 all contributions determined to be due, as well as liquidated damages, interest, attorneys' fees,  
4 costs incurred in enforcing the terms of the CBA and Trust Agreements, and such other legal and  
5 equitable relief as the Court deems appropriate.

6           38.     The contract breaches and violations of ERISA identified above harm the Plaintiffs  
7 and place at risk the Plaintiffs' ability to provide required employee benefits to their beneficiaries.

8       39. The Plaintiffs are entitled to all remedies provided by ERISA as and for  
9 compensation for the Defendants' violations.

### **THIRD CAUSE OF ACTION**

## [Breach of Written Trust Agreements – Merrill and Does & Roes]

12           40. The Trusts herein restate and reallege the above allegations as if fully set forth  
13 verbatim.

41. The CBA incorporates the terms of the Trust Agreements governing the Trusts.

15        42. The Trust Agreements for Plaintiffs Employee Painters' Trust, Western Glaziers  
16 Retirement Trust, and District Council No. 5 Apprenticeship and Training Trust Fund each  
17 contain an express provision imposing personal liability for unpaid contributions and related  
18 damages on the President, Treasurer, or other corporate officer of the employer responsible for  
19 payment of contributions for an employer required to make such contributions.

20       43. At all times material herein, Defendants Merrill and Does and Roes, as Alaska  
21 Glazing's corporate officers responsible for making payment of contributions to the Plaintiffs,  
22 became personally and individually bound and liable to the Employee Painters' Trust, Western  
23 Glaziers Retirement Trust, and District Council No. 5 Apprenticeship and Training Trust Fund,  
24 pursuant to the express terms of the Trust Agreements governing those trust funds, for the  
25 contributions and related damages owed to those trust funds by Alaska Glazing.

## COMPLAINT

Case No.

Page 8

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

## **FOURTH CAUSE OF ACTION**

[Demand for Payment from Contractor's License Bond- Hartford Fire Insurance Company]

44. The Trusts restate and reallege the above allegations as if fully set forth herein.

45. RCW 18.27.040 requires each contractor in this state to obtain a bond upon

being licensed or provide another undertaking equivalent to a bond.

46. Employees and laborers of a contractor are parties protected by the bond.

47. The protection extends not only to wages but also to employee benefits owed to employees or laborers.

48. The Trusts are entitled to payment from Alaska Glazing for the unpaid benefit contributions known for the months Alaska Glazing reported without payment and for the unknown amounts for months for which Alaska Glazing has not reported to the Trust.

49. Hartford stands in the place of Alaska Glazing and is a guarantor for the payment of fringe benefit contributions to the Trust.

50. Therefore, Hartford is liable to the Trust to the same extent as is Alaska Glazing.

51. The only limitation to Hartford's liability is that its liability may not be greater than the penal sum of the bond issued, which is Bond No. 52bsbhs1190.

52. The Trust's demand upon Hartford is for all contributions, liquidated damages, interest, and attorney's fees and costs incurred in connection with Alaska Glazing's delinquency.

## PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For the Court's Order compelling Defendants to abide by the terms of the Labor Agreement:

## COMPLAINT

Case No.

Page 9

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*

1           2. For damages for breach of contract in an amount to be proven at trial;  
2           3. For unpaid fringe benefit contributions in amounts to be proven at trial;  
3           4. For liquidated damages in an amount to be proven at trial;  
4           5. For accrued interest on all unpaid contributions and damages from their due dates  
5 until paid;  
6           6. For the Plaintiffs' reasonable attorney's fees;  
7           7. For the Plaintiffs' costs of suit incurred herein;  
8           8. For such additional relief as may be provided for by 29 U.S.C. § 1132; and  
9           9. For such additional relief as this Court may deem just and proper.

10           DATED this 25th day of November 2019.

11           CHRISTENSEN JAMES & MARTIN

12           By: /s/ Wesley J. Smith  
13           Wesley J. Smith, Esq.  
14           WSBA # 51934  
15           11900 NE 1st St., Suite 300, Building G  
16           Bellevue, WA 98005  
17           P. (425) 462-4045/ (702) 255-1718  
18           F. (425) 462-5638/ (702) 255-0871  
19           wes@cjmlv.com  
20           *Counsel for Plaintiffs*

21           THE URBAN LAW FIRM

22           By: s/ Nathan R. Ring  
23           Nathan R. Ring, Esq.  
24           WSBA # 46271  
25           720 N. 10th Street, A #389  
          Renton, WA 98057  
          P. (702) 968-8087  
          F. (702) 968-8088  
          nring@theurbanlawfirm.com  
          *Counsel for Plaintiffs*

COMPLAINT

Case No.

Page 10

CHRISTENSEN JAMES & MARTIN  
11900 NE 1st St., Ste 300, Bldg. G Bellevue, WA 98005  
THE URBAN LAW FIRM  
720 N. 10th Street, A #389, Renton, WA 98057  
P. (425) 462-4045 / (702) 255-1718  
wes@cjmlv.com  
nring@theurbanlawfirm.com  
*Counsel for the Plaintiffs*